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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/662,251	09/15/2003	Fung-jou Chen	KCC-14,105.4	2418

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EXAMINER	
HILL, LAURA C	

ART UNIT	PAPER NUMBER
3761	

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05/14/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
10662251	9/15/2003	CHEN ET AL.	KCC-14,105.4

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Laura C. Hill

ART UNIT	PAPER
3761	20070509

DATE MAILED:

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Commissioner for Patents

Office Action Summary

Application No.

10/662,251

Applicant(s)

CHEN ET AL.

Examiner

Laura C. Hill

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 March 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 6 March 2007 have been fully considered but they are not persuasive.

Examiner concurs with Applicant that claim 10 was inadvertently included in the rejections section (see page 2 of the Office action dated 4 December 2006 and pages 9-10 Remarks).

In response to Applicant's argument that the prior art feminine pad 10 does not include an absorbent core comprising an outer absorbent member and a central absorbent member, let alone a wicking barrier disposed between the outer absorbent member and the central absorbent member (see Remarks pages 10-12 and 15), Examiner maintains Sherrod discloses central absorbent 32 disposed over the void/open area disposed in outer absorbent member 30 (see figure 6). Sherrod further discloses wicking barrier 54 disposed between outer absorbent 30 and central absorbent 32 and comprising a vertical & horizontal component (see figure 6).

In response to Applicant's argument that transfer member 54 doesn't correspond to the wicking material (see Remarks pages 11-12), Examiner notes that the inventor may define specific terms used to describe invention, but must do so "with reasonable clarity, deliberateness, and precision" and, if done, must "set out his uncommon" definition in some manner within the patent disclosure' so as to give one of ordinary skill in the art notice of the change" in meaning. *Intellicall, Inc. v. Phonometrics, Inc.*, 952 F.2d 1384, 1387-88, 21 USPQ2d 1383, 1386 (Fed. Cir. 1992)). Where an explicit

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definition is provided by the applicant for a term, that definition will control interpretation of the term as it is used in the claim. *Toro Co. v. White Consolidated Industries Inc.*, 199 F.3d 1295, 1301, 53 USPQ2d 1065, 1069 (Fed.Cir. 1999). Meaning of words used in a claim is not construed in a "lexicographic vacuum, but in the context of the specification and drawings"). Any special meaning assigned to a term "must be sufficiently clear in the specification that any departure from common usage would be so understood by a person of experience in the field of the invention." *Multiform Desiccants Inc. v. Medzam Ltd.*, 133 F.3d 1473, 1477, 45 USPQ2d 1429, 1432 (Fed. Cir. 1998). See also *Process Control Corp. v. HydReclaim Corp.*, 190 F.3d 1350, 1357, 52 USPQ2d 1029, 1033 (Fed. Cir. 1999) and MPEP § 2173.05(a). In the instant case, since Applicant has not set forth the term "wicking barrier" with reasonable clarity, deliberateness, and precision, the term has been given its plain meaning consistent with MPEP 2111.01. Thus since the transfer member 54 of Sherrod reduces leakage by transferring fluid, it meets the limitation of "wicking barrier."

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 4-5, 8, 12-13, 15, 29-30, 32-33, and 36 are rejected under 35

U.S.C. 102(b) as being anticipated by Sherrod et al. (US 4,973,325; herein 'Sherrod').

Regarding claims 1 and 29-30 Sherrod discloses a feminine pad 10, 28 comprising an

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absorbent core 14 sandwiched between a fluid permeable cover 20,44 and a fluid impermeable baffle 22,42 (column 3, lines 49-53), the absorbent core having central absorbent member 32 disposed over and extending into a void of an outer absorbent member 30 (column 4, line 41 and figure 6); and a transfer member/wicking barrier 54 disposed between outer absorbent member 30 and central absorbent member 32, said wicking barrier comprising a vertical component that spans a vertical distance between the outer and central absorbent members and a horizontal component that spans a horizontal distance on the bodyside of the absorbent core, the wicking barrier facilitates movement of body fluid from fluid permeable cover 44 downward and outward to distant areas of central and outer absorbent members 30,32 (column 4, lines 38-41 and figure 6).

Regarding claim 2 Sherrod discloses transfer member/wicking barrier 54 can be constructed from any material which will readily transfer fluid as well as having the ability to give the fluid up to a cellulose absorbent or to an absorbent containing a superabsorbent (column 4, lines 41-45).

Regarding claims 4 and 32 Sherrod discloses wicking barrier 54 can be a bonded carded web such as a composite of materials made by one of many known air-forming processes such as spun bond, which is a known air-forming process (column 4, lines 58-61).

Regarding claims 5, 8, 12, 33, and 36 Sherrod discloses wicking barrier 54 creates a body fluid stain 74 which is distributed along the longitudinal axis of the article

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and is distributed laterally to a greater portion of the distant/outer garment-facing of absorbent members 30, 32 (column 6, lines 10-15, figure 6).

Regarding claim 13 the method of forming the device (e.g. 'spiral wound composite') is not germane to the issue of patentability of the device itself. Therefore, this limitation has been given little patentable weight.

Regarding claim 15 Sherrod discloses the article as discussed above with respect to claim 1 and further discloses peel strip/shaping layer 80 (column 6, lines 18-25 and figure 6).

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 3, 6-7, 9, 11, 16-17, 31, 34-35, 37 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sherrod et al. (US 4,973,325; herein 'Sherrod').

Regarding claims 3, 6, 31 and 34 Sherrod does not expressly disclose wicking barrier is formed from an apertured film. One would be motivated to modify the wicking barrier with an apertured film for enhanced vertical fluid wicking since it is well known that the addition of apertures increases said fluid wicking. Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify the wicking barrier and thus providing a wicking barrier formed of an apertured film.

Regarding claims 9, 11, 37, and 39 Sherrod discloses wicking barrier 54 and central absorbent member 32 as discussed above with respect to claims 1 and 29. It would have been obvious to one of ordinary skill in the art to modify the wicking barrier

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and central absorbent members of Sherrod to have multiple layers, as opposed to a single, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

Regarding claims 16-17 and 35 Sherrod inherently outer shaping member thickness, edge width, basis weight or wicking barrier horizontal spanning distance values since the discovery of a previously unappreciated property of a prior art composition, or of a scientific explanation for the prior art's functioning, does not expressly disclose not render the old composition patentably new to the discoverer. *Atlas Powder Co. v. Ireco Inc.*, 190F.3d 1342, 1347, 51 USPQ2d 1943, 1947 (Fed. Cir. 1999). Thus the claiming of a new use, new function or unknown property which is inherently present in the prior art does not expressly disclose not necessarily make the claim patentable. *In re Best*, 562 F.2d 1252, 1254, 195 USPQ 430, 433 (CCPA 1977).

Alternatively, the aforementioned values are result-effective variables since they are a result of the materials used and the size of the article. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Sherrod with the aforementioned values, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch and Slaney*, 617 F. 2d 272, 205 USPQ 215 (CCPA 1980).

Allowable Subject Matter

Claims 10, 14 and 38 are allowable since they have been rewritten in independent form in the amendments dated 6 March 2007 (see pages 5-6 Office action dated 4 December 2006).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C. Hill whose telephone number is 571-272-7137. The examiner can normally be reached on Monday through Friday (hours vary).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Laura C Hill
Examiner
Art Unit 3761

LCH



TATYANA ZALUKAEVA
SUPERVISORY SENIARY EXAMINER

